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ABSTRACT

This guide for work-based learning, the Fair Labor Standards Act (FLSA), and the North Carolina Wage and Hours Act is designed to serve employers, educators, agency placement staff, labor organizations, and all those involved in school-to-work initiatives by helping them to understand a variety of issues related to students in the workplace. Based on materials developed by the National Office of School-to-Work Opportunities in support of the School-to-Work Opportunities Act (P.L. 103-239) the guide has been supplemented by the North Carolina Department of Labor with the requirements of North Carolina's youth employment and minimum wage laws. Following an introduction and a one-page overview of school-to-work, the guide is organized in three parts that address issues related to student learning experiences at an employer's worksite and explain when and how North Carolina and federal child labor laws and minimum wage provisions apply. The three parts cover the following: (1) Work-Based Learning; (2) Understanding the Fair Labor Standards Act and Comparable North Carolina laws; and (3) General Information (state and local laws, resources, and workers' compensation). (KC)

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Fair Labor Standards Act and the North Carolina Wage and Hour Act

School-to-Work Opportunities

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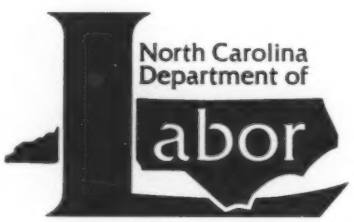

Harry E. Payne, Jr.
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A Guide to Work-Based Learning,
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August 1996

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School-to-Work Opportunities

3rd Edition **August 1996**

Work-Based Learning, the Fair Labor Standards Act, and the North Carolina Wage and Hour Act

This guide on work-based learning, the Fair Labor Standards Act, and the North Carolina Wage and Hour Act is designed to serve employers, educators, agency placement staff, labor organizations, and all those involved in School-to-Work initiatives by helping them to understand a variety of issues related to students in the workplace.

Much of this guide was produced by the U.S. Departments of Education and Labor's Office of School-to-Work Opportunities in support of the School-to-Work Opportunities Act (P.L. 103-239). The guide has been supplemented by the N.C. Department of Labor with the requirements of North Carolina's youth employment and minimum wage laws. Prepared in collaboration with the Office of the U.S. Solicitor and the Employment Standards Administration of the U.S. Labor Department, this guide is designed as an introductory overview of FLSA and the North Carolina Wage and Hour Act, and it is not intended to be used as an official interpretive document.

For more specific information and technical assistance on FLSA, please call the U.S. Department of Labor's Wage and Hour Division, listed on page 23. For similar information and assistance on the North Carolina Wage and Hour Act, please call the N.C. Department of Labor's Wage and Hour Division, also listed on page 23. For general information regarding School-to-Work Opportunities in North Carolina, please call the School-to-Work Office at (919) 715-3300.

Photocopying and wide dissemination of this guide is encouraged.

School-to-Work Opportunities

The School-to-Work Opportunities Act of 1994 (P.L. 103-239) paves the way for a new approach to learning in America. Through this act, states and localities will build high quality school-to-work opportunities systems that prepare young people for further education and careers in high-skill, high-wage jobs.

School-to-Work is based on the proven concept that education for all students can be made more relevant and useful to future careers and lifelong learning. Rather than just memorizing facts out of a textbook, students will learn by applying what they learn to real life, real work situations.

Developed with the input of business, education, labor, and community-based organizations that have a strong interest in how American students prepare for the changing world of work in the 21st century, the effort to create a national school-to-work system contains three fundamental elements:

★ ***Work-based learning.*** Employers provide structured learning experiences for students that develop broad, transferable skills. Work-based learning provides students with opportunities to study complex subject matter as well as vital workplace skills in a hands-on, "real life" environment.

★ ***School-based learning.*** School-to-Work programs restructure the educational experience so that students learn rigorous academics through career applications. Teachers work together with employers to develop broad-based curricula that help students distill and deepen lessons of their work experience. Students actively develop projects and work in teams, much like the modern workplace.

★ ***Connecting activities.*** Connecting activities ensure the coordination of the work- and school-based learning components of a School-to-Work system. They may include matching students with the work-based learning opportunities of employers, linking participants with other community services necessary to assure a successful transition from school to work, and increasing opportunities for minorities, women, and individuals with disabilities. Nationally, School-to-Work is jointly administered by the U.S. Departments of Education and Labor.

For information regarding School-to-Work opportunities in North Carolina, please call the School-to-Work Office at (919) 715-3300.

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A Guide to Work-Based Learning, Federal and State Child Labor Laws, Minimum Wage Provisions, and the Provisions of Comparable North Carolina Laws

Introduction

From its inception, the Fair Labor Standards Act has protected the rights, safety, and well-being of youth workers in the United States. With the passage of the School-to-Work Opportunities Act in 1994, questions have arisen concerning whether a student's work-based learning experience is covered under the Fair Labor Standards Act.

Our goal in producing this guide is to assist you—the employers, educators, agency placement staff, labor organizations, and all those who make School-to-Work (STW) systems possible.

STW initiatives cover a wide range of activities, some of which are subject to FLSA and some of which are not. FLSA specifies particular limits on the employment of minors under the age of 18. Under the School-to-Work Opportunities Act, no waivers of FLSA are permitted; however, participation in an STW initiative carries no additional compliance obligations under FLSA; working with STW students is just like working with other minors.

You'll want to read this guide in its entirety to become aware of the issues. An explanation of both federal and North Carolina's youth employment and minimum wage laws has been included in this guide to give you the full picture of the application of wage and hour laws to STW initiatives. Because the particulars of each work-based learning experience may differ, the total picture—and the legal terminology—must be taken into account to determine when the FLSA and/or North Carolina law applies. If, after reading the guide, you believe yours is not a clear-cut case, we urge you to contact the appropriate Wage and Hour Division Office listed on page 23.

The guide addresses issues related to student learning experiences at an employer's worksite and explains when and how North Carolina and federal child labor laws and minimum wage provisions apply. It is organized in three parts:

Part I: **Work-Based Learning**

Part II: **Understanding the Fair Labor Standards Act (FLSA) and Comparable North Carolina Laws**

Part III: **General Information**

Part I. Work-Based Learning

Work-Based Learning

Part I explains a variety of student learning experiences that may take place at an employer's worksite. Some learning experiences may not be employment relationships. The elements and criteria of such learning experiences are discussed here.

#1. What is work-based learning under STW?

Work-based learning—a learning experience for a student at an employer's worksite—is one of the three core elements of STW systems, along with school-based learning and connecting activities. It includes work experience (both paid and unpaid), workplace mentoring, and broad instruction, to the extent practicable, in all aspects of an industry.

In addition, work-based learning includes a planned program of job training and work experience at progressively higher levels. This planned program, coordinated with school-based learning, relates to the career majors of students and leads to the award of skill certificates.

Instruction in general workplace competencies—including developing positive work attitudes, employability, and participative skills—is also part of the work-based learning component of STW.

#2. Are all STW work-based learning experiences subject to the FLSA and the North Carolina Wage and Hour Act?

No. Activities occurring in the workplace that do not involve the performance of work are not "employment" subject to the Fair Labor Standards Act or the North Carolina Wage and Hour Act. Some examples of these activities include:

- career awareness and exploration
- field trips to a worksite
- job shadowing (whereby a student follows and observes an employee in his or her daily activities, but performs no work)

a. What are the elements of a learning experience at an employer's worksite?

Elements of a Learning Experience

There are four elements that constitute a learning experience under STW. Specifically, a learning experience:

(1) is a planned program of job training and work experience for the student, appropriate to the student's abilities, which includes training related to preemployment and employment skills to be mastered at progressively higher levels that are coordinated with learning in the school-based learning component and lead to the awarding of a skill certificate;

(2) encompasses a sequence of activities that build upon one another, increasing in complexity and promoting mastery of basic skills;

(3) has been structured to expose the student to all aspects of an industry and promotes the development of broad, transferable skills; and

(4) provides for real or simulated tasks or assignments which push students to develop higher-order critical thinking and problem-solving skills.

If only some of these elements are met, it is possible that an STW student would be an employee under the FLSA and North Carolina's wage and hour laws; however, all of the facts and circumstances of the situation would have to be considered to decide if an employment relationship exists and whether the student or enterprise is covered by the FLSA. The Wage and Hour offices listed on page 23 can help you make the correct determination.

b. When is a learning experience not employment, as defined by the FLSA and North Carolina's wage and hour laws?

Student Criteria

A student enrolled in an STW learning experience as described above would not be considered an employee within the meaning of FLSA and North Carolina's wage and hour laws if **all** of the following criteria are met.

(1) the student receives ongoing instruction at the employer's worksite and receives close on-site supervision throughout the learning experience, with the result that any productive work that the student would perform would be offset by the burden to the employer from the training and supervision provided; and

Student Criteria (cont.)

(2) the placement of the student at a worksite during the learning experience does not result in the displacement of any regular employee—i.e., the presence of the student at the worksite cannot result in an employee being laid off, cannot result in the employer not hiring an employee it would otherwise hire, and cannot result in an employee working fewer hours than he or she would otherwise work; and

(3) the student is not entitled to a job at the completion of the learning experience—but this does not mean that employers are to be discouraged from offering employment to students who successfully complete the training; and

(4) the employer, student, and parent or guardian understand that the student is not entitled to wages or other compensation for the time spent in the learning experience—although the student may be paid a stipend for expenses such as books or tools.

When ***all four*** of the above student criteria are met, an employer would not be required to pay wages to a student enrolled in an STW learning experience.

c. What does it mean if a learning experience is not subject to the FLSA or the North Carolina Wage and Hour Act?

It means that a student is not an employee, wages are not paid, and neither federal nor North Carolina child labor laws apply. Payment of a stipend is optional; however, a stipend may not be used as a substitute for wages. A stipend is generally limited to reimbursement for expenses such as books, tuition, or tools. There are no specific stipulations for the length of a learning experience, as long as the four criteria listed above apply throughout the period of the student's participation.

While child labor laws do not apply if there is not an employment relationship, STW systems are encouraged to adhere to child labor laws with regard to hazardous working conditions. Instruction and training in occupations that involve the use of machinery such as slicing machines, trash compactors, and bread dough kneading machines have been known to cause serious injuries. Child labor laws provide guidance that can assist STW participants in determining hazardous jobs or working conditions for students (see Exhibits in Part II).

Part II: Understanding the Fair Labor Standards Act and Comparable North Carolina Laws

Part II applies to those STW situations where it is determined that an employment relationship exists.[1] Taken together, the FLSA and the N.C. Wage and Hour Act cover all situations where an employment relationship exists between the business and the student. Therefore, the work guidelines listed below apply to all employees in North Carolina.

Participation in an STW initiative carries no additional compliance obligations under the FLSA or North Carolina's wage and hour laws; working with STW students is the same as working with other minors.

#3. When is a work-based learning experience subject to the FLSA and comparable North Carolina laws?

Employment Relationship

Learning experiences that do not meet ***all four*** student criteria listed on pages 3 and 4 are employment relationships.

According to the Fair Labor Standards Act and the North Carolina Wage and Hour Act, the definition of "to employ" is "to suffer or permit to work." Case law states that an employment relationship "does not depend upon the level of performance or whether the work is of some educational and/or therapeutic benefit."[2]

#4. What are the implications of an employment relationship under the FLSA and comparable North Carolina laws?

When a student is an employee within the meaning of the FLSA and the North Carolina Wage and Hour Act, he or she must be paid no less than the minimum wage,[3] receive no less than one and one-half times the regular rate of pay for each hour worked in excess of 40 per workweek, and be employed in accordance with child labor laws.

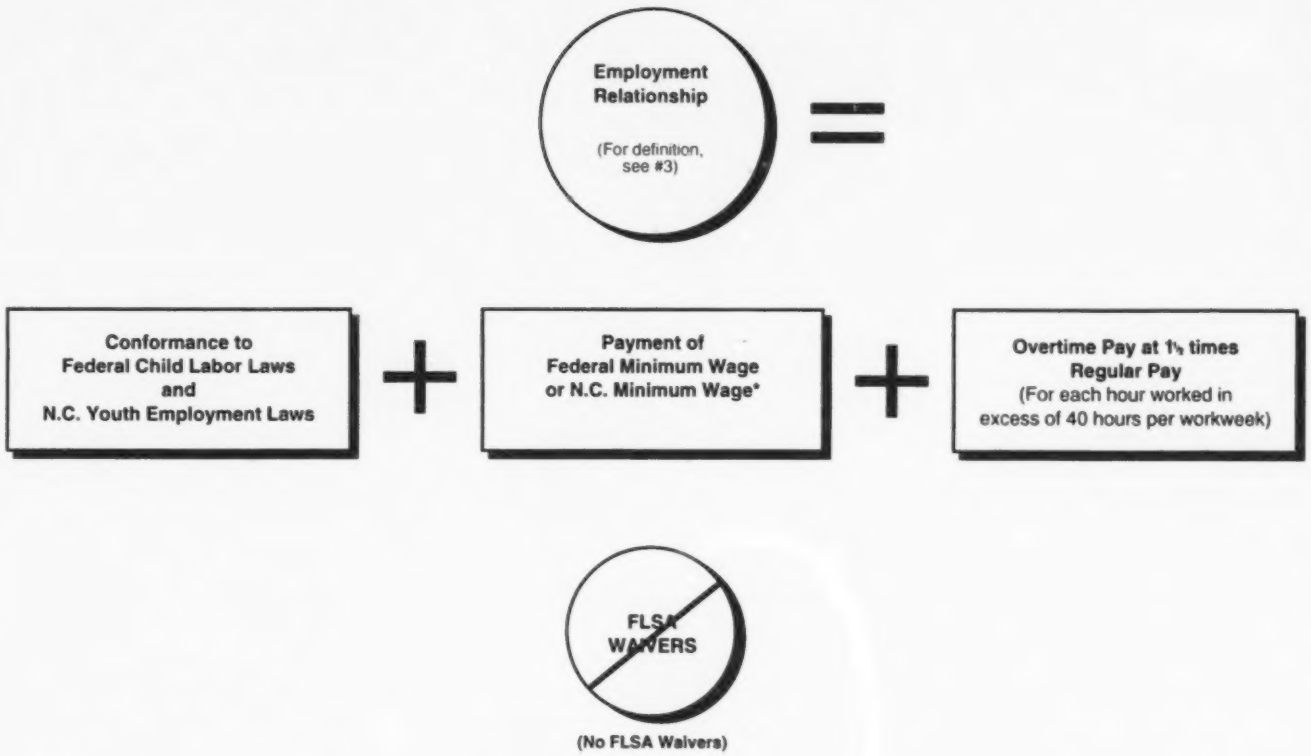
---

[1] As a general rule of thumb, if you pay wages or compensation, you create an employment relationship.

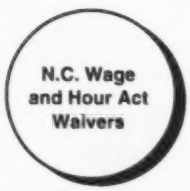
[2] This definition of "employ" pertains only to the FLSA and the North Carolina Wage and Hour Act. Employment is defined differently under different laws, such as those dealing with income tax, workers' compensation, occupational safety and health, unemployment insurance, and others. You will want to make sure you are in compliance with these other laws as well. (Check the blue pages of your local telephone book for the appropriate phone numbers to call for additional information on these programs.)

[3] Unless the full-time student is not "covered" by the FLSA, in which case the North Carolina student subminimum wage rate of 90 percent of the minimum wage rounded to the next lowest nickel may be paid; or unless your school or business holds a subminimum wage certificate issued by the U.S. Wage and Hour Division. Individuals eligible for employment under a subminimum wage certificate include: students with disabilities participating in a school-related work program, student-learners in a vocational education program, and full-time students in retail or service establishments, agriculture, or institutions of higher education. See #8 (page 10) for an explanation of FLSA "coverage."

STW, FLSA, and N.C. Wage and Hour Act: What You Need to Know


Employment Relationship
(For definition, see #3)
=
Conformance to Federal Child Labor Laws and N.C. Youth Employment Laws
+
Payment of Federal Minimum Wage or N.C. Minimum Wage*
+
Overtime Pay at 1½ times Regular Pay
(For each hour worked in excess of 40 hours per workweek)

(No FLSA Waivers)



Waiver from some work restrictions possible in hardship situation for youths 13 years of age and older.
Exceptions: 1. No waiver for hazardous or detrimental work.
2. No waiver for employment covered by the FLSA.

* Federal minimum wage: $4.25/hour effective 4/1/91
$4.75/hour effective 10/1/96
$5.15/hour effective 9/1/97

N.C. minimum wage: $4.25/hour effective 1/1/93

(See #8 *a* and *b*, page 11, for explanation of which employees are covered by the federal minimum wage.)

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#5. What are the standards and special provisions for employing minors?

Employing Minors

Ages 14–17, See Exhibits 1–5

Once it is determined that there is an employment relationship, certain standards and limitations apply to the employment of STW students, according to their age. Exhibits 1, 2, 3, and 4 (on pages 12, 14, 15, and 16, respectively) explain the standards and related special provisions in nonagricultural occupations for youth ages 14 and older employed in North Carolina. Exhibit 5 on page 18 lists the standards for farm jobs.

a. Are there any exceptions to the standards?

Student-Learners, Apprentices, WECEP

Yes, there are exceptions for student-learners and apprentices. A "student-learner" is one who is enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority or in a course of study in a substantially similar program conducted by a private school.

An apprentice is a participant in an apprenticeship program legally registered by the N.C. Department of Labor's Apprenticeship and Training Division (see Exhibit 1).

To qualify as an apprentice, one must obtain the appropriate certificate from the N.C. Department of Labor's Apprenticeship and Training Division. For more information call (919) 733-7533 or 1-800-LABOR-NC.

The Work Experience and Career Exploration Program (WECEP) also includes special provisions that permit 14- and 15-year-old STW enrollees to be employed during school hours and in occupations otherwise prohibited by regulation (see Exhibit 3).

In addition, if your school or business holds a student subminimum wage certificate issued by federal regional Wage and Hour, it may pay the following individuals a subminimum wage: students with disabilities participating in a school-related work program; student-learners in a vocational education program; and full-time students in retail or service establishments, agriculture, or institutions of higher education.

For students whose employment is not covered by the FLSA, a student subminimum wage of 90 percent of the full minimum wage rounded down to the nearest nickel may be paid under North Carolina law. As of August 1996, the North Carolina student subminimum wage rate is $3.80 per hour.

b. May students under age 14 participate in STW Programs?

Under Age 14

Yes. Students under age 14 may participate in education and training activities. These may include, but are not limited to, presentations in the classroom by employers and employees, field trips to businesses, and job shadowing (whereby a student follows and observes an employee in his or her daily activities, but performs no work).

In general, students under age 14 may not be employed in nonfarm jobs; therefore, while they may participate in school-to-work education and training activities, employment may not be a component of their program.

c. May agricultural activities be included in STW Programs?

Agricultural Programs

Yes, but the standards for agricultural programs differ by the age of the students. Youths under age 16 enrolled in STW activities may be employed on farm jobs, but the child labor regulations contain limitations on their employment and generally limit work to periods outside local public school hours. Students 16 years of age and older may be employed in any farm job at any time. Exhibit 5 explains the child labor requirements for farm jobs.

For more information concerning the employment of minors in agriculture, contact the U.S. Wage and Hour Division, or see *The Child Labor Requirements in Agriculture under the Fair Labor Standards Act*, Child Labor Bulletin No. 102.

#6. Are minors permitted to drive on the job?

Driving Restrictions

No. For nonfarm jobs, almost all driving of motor vehicles on public roads and highways is prohibited by Hazardous Occupations Order 2 (HO 2) (see Exhibit 1).

The driving restriction even applies to student-learners and apprentices who, based on special provisions, are allowed to work in certain hazardous occupations. So, for example, a roofer apprentice would be allowed to perform some roofing work, but HO 2 would prohibit him or her from driving a company truck to and from job sites.

For farm jobs, minors may drive on the farm, but not on a public highway. (Certain restrictions apply to minors under age 16 driving farm equipment.)

a. Are any exceptions made?

Exceptions to Driving Restrictions

Driving that is "occasional and incidental" is permitted. Specifically, driving is "incidental" if it is limited to no more than 20 percent of the minor's work in any workday and does not exceed 5 percent of the minor's work time in any workweek when performed.

Driving is "occasional" if the minor drove (a single episode of operating a motor vehicle on public roads or highways as part of his or her employment) on average no more often than once in a workweek or no more often than four times in a calendar month.

In addition, for students whose employment is not covered by the FLSA, there is a limited exception that permits driving if all of the following circumstances are met:

- student holds a valid N.C. driver's license
- student has completed a state-approved driver education course
- student drives an automobile or truck not exceeding 6,000 pounds gross vehicle weight
- student drives only within a 25-mile radius of the principal place of employment and does not tow vehicles

See #8 on page 10 for an explanation of FLSA coverage.

b. What about home-to-work travel?

No restrictions are placed on home-to-work driving for students who have valid driver's licenses and are driving their own personal vehicles, because such activity is outside of work hours.

#7. Is a work permit or other proof of age required?

Work Permits and Proof of Age

The North Carolina Wage and Hour Act provides that no employer shall employ any youth under 18 years of age without a youth employment certificate (YEC) unless specifically exempted. The major exemptions from this requirement are for farm work, domestic employment (household work in or about the private home of the employer), and employment with a government agency. YECs are issued by the department of social services in each county and their designees, who may be school personnel in some instances.

Even where no YEC is required due to an exemption, the FLSA requires employers to keep on file the date of birth of every employee under age 19.

#8. Does it make a difference in North Carolina whether a student's employment is "covered" by the FLSA or not?

Interface between the FLSA and the North Carolina Wage and Hour Act

When a student's work-based learning experience qualifies as employment (see #3 on page 5), it generally makes no difference whether the student's employment is covered by the FLSA or not. This is true because the North Carolina Wage and Hour Act, which applies to most employees not covered by the FLSA, adopts the FLSA employment standards for 14- and 15-year-old youths and 16- and 17-year-old youths in nonfarm jobs, as well as the exceptions to those limitations. Moreover, most of the additional North Carolina youth employment regulations which supplement the FLSA laws apply whether the student's employment or the business where he or she is employed is "covered" by the FLSA or not (see Exhibit 4). For example, with limited exception a youth employment certificate is required for all nonfarm employment of youth under age 18 in North Carolina.

There are, however, three instances in which North Carolina laws provide different regulations only for youth whose employment is not covered by the FLSA:

(1) No youth under 16 years of age (whose employment is not "covered" by the FLSA) shall be employed for more than five consecutive hours without an interval of at least 30 minutes for rest. No period of less than 30 minutes is deemed to interrupt a continuous period of work.

(2) Youths who are 16 or 17 years of age (whose employment is not "covered" by the FLSA) may, under certain limitations, be assigned as part of his or her employment to drive an automobile or truck. See Exhibit 4 for the specific limitations.

(3) Full-time student employees (whose employment is not "covered" by the FLSA) may be paid a subminimum wage of 90 percent of the North Carolina minimum wage, rounded to the lowest nickel. No special certificate is required to pay this wage rate. As of August 1996, the North Carolina full-time student subminimum wage is $3.80 per hour.

Thus, to determine when these provisions of North Carolina law apply, it is necessary to know when student employment is covered by the FLSA (see *a* and *b* below).

a. When is a student who is an employee "covered" under the FLSA?

Coverage under FLSA

The FLSA covers employees who are performing work for any one type of enterprise that is either:

- engaged in interstate commerce
- producing goods for interstate commerce
- handling, selling, or otherwise working on goods or materials that have been moved or produced for such commerce

A covered enterprise under FLSA would be one:

(1) with annual gross volume of sales made or business done of not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated); or

(2) that is engaged in the operation of a hospital, an institution primarily engaged in the care of those who are physically or mentally ill or disabled or aged and who reside on the premises, a school for children who are mentally or physically disabled or gifted, a preschool, an elementary or secondary school, or an institution of higher education (whether operated for profit or not for profit); or

(3) that is an activity of a public agency.

b. Can a student be covered by the FLSA, even if the enterprise is not?

Yes. An enterprise may not be covered under FLSA, given the above criteria, but certain employees of the enterprise may be, depending on the nature of their work. Specifically, if any employee is engaged in interstate commerce, this employee is covered and the provisions of FLSA apply to him or her.

Examples of interstate commerce include taking or placing out-of-state phone calls; sorting or sending out-of-state mail; receiving papers coming from out-of-state; and handling, shipping, and receiving products that are moving in interstate commerce.

(For more information on coverage, see the *Handy Reference Guide to the Fair Labor Standards Act*, or call the Wage and Hour Division office. When calling, give detailed information on the particular situation because coverage depends upon the specific facts of each case.)

Exhibit 1
Standards for 16- and 17-year-olds (Nonfarm)

The following standards apply to 16- and 17-year-old youths employed in nonfarm jobs.

Hours Limitations (See Exhibit 4)

None under FLSA: federal law does not limit either the number of hours or the time of day that youths 16 years of age and older may work (see Exhibit 4 for the restrictions on late night work under North Carolina law).

Occupation Limitations

Students who are 16 and 17 years of age may perform all work except in 17 occupations considered too hazardous and six considered too detrimental for all youth under the age of 18 (see Exhibit 4 for the six detrimental occupations in which employment is prohibited under North Carolina law). The Hazardous Occupations Orders (HOs) are:

HO 1 Manufacturing and storing explosives

HO 2 Motor-vehicle driving and outside helper, including driving motor vehicles or working as outside helpers on motor vehicles or driving as a part of any occupation

HO 3 Coal mining

HO 4 Logging and sawmilling

HO 5* Work using power-driven woodworking machines, including the use of saws on construction sites

HO 6 Work where exposed to radioactive substances

HO 7 Work involving the operation of power-driven hoisting devices, including the use of fork lifts, cranes, and nonautomatic elevators

HO 8* Work using power-driven metal forming, punching, and shearing machines, but HO 8 permits the use of a large group of machine tools used on metal, including lathes, turning machines, milling machines, grinding, boring machines and planing machines

HO 9 All mining other than coal mining, including work at gravel pits

HO 10* Work involving slaughtering or meat-packing, processing, or rendering, including the operation of power-driven meat slicers in retail stores

HO 11 Work involving the operation of power-driven bakery machines

HO 12* Work using power-driven paper-products machines, including the operation and loading of paper balers in grocery stores

HO 13 Work in manufacturing of brick, tile, and kindred products

HO 14* Work involving the use of circular saws, band saws, and guillotine shears

HO 15 All work involving wrecking, demolition, and ship-breaking

HO 16* All work in roofing operations

HO 17* All work in excavating, including work in a trench as a plumber

Exceptions to Occupation Limitations

Special Provisions for Student-Learners and Apprentices—All detrimental occupations (see Exhibit 4) and the seven HOs identified with an asterisk permit the employment of apprentices and student-learners in vocational education programs under certain conditions. Student-learners in STW programs will meet the student-learner exemption if the student is employed under a written agreement which provides that:

(1) all hazardous work will be performed under the direct and close supervision of a qualified and experienced person;

(2) safety instructions will be given by the school and reinforced by the employer with on-the-job training;

(3) the job training follows a schedule that reflects organized and progressive skill developments; and

(4) the work in the hazardous occupation is *intermittent* and for *short periods of time* and is under the direct and close supervision of a journeyman as a necessary part of such apprenticeship training.

The written agreement must be signed by the employer and placement coordinator (or school principal). Copies of the agreement must be kept on file by both the school and the employer.

Note: **To qualify as an apprentice, one must obtain the appropriate certificate from the Apprenticeship and Training Division of the N.C. Department of Labor. For more information, contact N.C. Department of Labor, Apprenticeship and Training Division, 4 West Edenton Street, Raleigh, NC 27601-1092, telephone 1-800-LABOR-NC.**

Exhibit 2
Standards for 14- and 15-year-olds (Nonfarm)

The following standards apply to 14- and 15-year-old youths employed in nonfarm jobs.

Hours Limitations

The hours 14- and 15-year-olds may work are limited to:

- outside school hours
- no more than 3 hours on a school day
- no more than 18 hours in a school week
- no more than 8 hours on a nonschool day
- no more than 40 hours in nonschool weeks
- between 7 a.m. and 7 p.m. (Between June 1 and Labor Day they may work as late as 9 p.m.)

Occupation Limitations

In addition to the Hazardous Occupations listed in Exhibit 1 that are prohibited for minors under the age of 18, 14- and 15-year-olds may not work in the following occupations:

- cooking, other than at lunch counters and snack bars within the view of the customer
- manufacturing, mining, processing
- most transportation jobs
- work in warehouses and workrooms
- on construction jobs except in the office
- in any job involving hoists, conveyor belts, power-driven lawn mowers, and other power-driven machinery

No Exceptions to Occupation Limitations

Occupation limitations are strictly enforced for 14- and 15-year-old youths, with no exceptions for youths covered by the FLSA. The student-learner provisions applicable to some Hazardous Occupations for youths 16 and 17 years of age (as listed in Exhibit 1) do not apply to minors under the age of 16. A limited waiver under North Carolina law may be available in hardship situations for youth not covered by the FLSA. See #8 *a* and *b* on page 11 for an explanation of FLSA "coverage."

Exhibit 3
Special Provisions for 14- and 15-year-olds under WECEP

The Work Experience and Career Exploration Program (WECEP) includes special provisions that permit 14- and 15-year-old STW enrollees to be employed during school hours and in occupations otherwise prohibited by regulation.

WECEP is designed to provide a carefully planned work experience and career exploration program for 14- and 15-year-old youths, including youths in STW programs, who can benefit from a career-oriented educational program. WECEP is designed to meet the participants' needs, interests, and abilities. Among other things, the program helps dropout-prone youths to become reoriented and motivated toward education and helps to prepare them for the world of work.

A state education agency with a school-to-work program may obtain approval from the U.S. Department of Labor for STW enrollees participating in WECEP to be employed:

- up to 3 hours on a school day
- up to 23 hours during a school week
- any time during school hours
- under variances granted by the Wage and Hour administrator that permit employment of WECEP participants in otherwise prohibited activities and occupations*

Any representative of the governor who is interested in establishing a WECEP may forward a letter of application to the administrator of the Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210. The provisions for WECEP are set by Regulations 29 CFR Part 570.35a. Approval to operate a WECEP is granted by the administrator of the Wage and Hour Division for a two-year period.

***Note: The regulations do not permit issuance of WECEP variances in manufacturing, mining, or in any of the 17 hazardous occupations orders listed in Exhibit 1.**

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Exhibit 4
North Carolina Youth Employment Laws for Nonfarm Jobs

North Carolina law adopts the federal employment standards for 14- and 15-year-old youths and 16- and 17-year-old youths employed in nonfarm jobs, as well as the exceptions to those limitations (see Exhibits 1, 2, and 3). Thus, nonfarm businesses not covered by the FLSA must nevertheless comply with the same limitations on the employment of youth that apply to FLSA covered businesses (see #8 on page 10 for an explanation of FLSA "coverage"). Farm work is completely exempt from any regulation under North Carolina youth employment laws.

In addition, the following requirements of North Carolina youth employment law apply to all nonfarm businesses in this state, whether or not they are covered by the child labor provisions of the FLSA:

Youth Employment Certificate

An employer may not employ any youth under 18 years of age until that youth has obtained a youth employment certificate. Such certificates are issued by the local county department of social services or its designees either in the county where the youth will work or in the county where the youth resides. In some counties, certain school personnel may have been designated to issue these certificates. Each certificate issued is reviewed by the N.C. Wage and Hour Division and may be revoked if found to have been issued for a job not permitted by state or federal law. Such a revocation may be appealed by filing a petition for a hearing with the Office of Administrative Hearings pursuant to the procedures contained in Article 3 of Chapter 150B of the General Statutes.

Late Night Work Limitations

During the regular school term, no youth under 18 years of age who is enrolled in grade 12 or lower may be employed between 11 p.m. and 5 a.m. when there is school for the youth the next day. This restriction does not apply to youths 16 and 17 years of age if the employer receives written approval for the youth to work beyond the stated hours from the youth's parent or guardian and from the youth's principal or the principal's designee.

(Continued on next page.)

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Detrimental Occupation Limitations

In addition to the 17 hazardous occupations prohibited to youths under 18 years of age by federal law, the North Carolina Commissioner of Labor has adopted regulations identifying six detrimental occupations in which youths under 18 may not be employed:

1. Welding
2. Any processes where quartz or any other form of silicon dioxide or an asbestos silicate is present in powdered form
3. Any work involving exposure to lead or any of its compounds in any form
4. At any work involving exposure to benzol or any benzol compound which is volatile or which can penetrate the skin
5. Spray painting
6. Handling of unsterilized hides or animal or human hair

Exceptions to Detrimental Occupations

Youths and employers working under the supervision of bona fide apprenticeship and student-learner programs, as defined by the Fair Labor Standards Act and the rules and regulations promulgated thereunder, are exempt from the prohibition against employment of youths in detrimental occupations under the same conditions as the exemption from certain hazardous occupation limitations (see page 13).

ABC Limitations

No person who holds any ABC permit issued pursuant to the provisions of Chapter 18B of the General Statutes for the on-premises sale or consumption of alcoholic beverages, including any mixed beverages, shall employ a youth:

1. under 16 years of age on the premises for any purpose

2. under 18 years of age to prepare, serve, dispense, or sell any alcoholic beverages, including mixed beverages

Youths under 16 years of age employed by their parents may be employed on the premises of an establishment owned solely by one or both of their parents who hold an ABC permit issued pursuant to the provisions of Chapter 18B of the General Statutes for the on-premises sale or consumption of alcoholic beverages so long as another employee at least 21 years of age is in charge and present at the licensed premises and the youth does not prepare, serve, dispense, or sell any alcoholic beverages, including any mixed beverages.

Exhibit 5
Standards for Farm Jobs

The following standards apply to minors employed in farm jobs. Farm work is completely exempt from North Carolina Wage and Hour Act requirements.

Hours Limitations

- Minors 16 years old and older may be employed in any farm job at any time.
- Fourteen- and 15-year-old farmworkers may be employed outside school hours in any occupation not declared hazardous. Children who move from a school district where schools have closed for the summer vacation and live in another district where the schools are still in session, may work during the hours that the school is in session in the new district. After May 15, it is assumed that school is closed for the summer.
- With written parental consent, 12- and 13-year-olds may be employed outside school hours in any nonhazardous job on the same farm where their parents are employed.
- Minors under 12 years of age may be employed outside school hours in any nonhazardous job with written parental consent but only on farms not subject to the minimum wage provisions of FLSA.
- Minors of any age may perform work at any time on a farm owned or operated by the minor's parents or persons standing in place of the parents.

Occupation Limitations

- Once teenagers reach age 14, they may perform the same agricultural work as an adult except occupations that involve the agricultural hazardous occupations orders.
- Agricultural hazardous occupations orders apply to minors under age 16. These orders are listed in Child Labor Bulletin 102—*The Child Labor Requirements in Agriculture under the Fair Labor Standards Act*.

Exemptions

Exemptions from the agricultural hazardous occupations orders applicable to tractors and certain other farm machinery apply to 14- and 15-year-old student learners enrolled in vocational educational programs and holders of certificates of completion of training under 4-H programs.

Part III. General Information

Part III highlights pertinent information on state and local laws, waivers, terminology, and resources available on FLSA.

State and Local Laws

#9. What about state and local laws?

North Carolina youth employment laws are explained on pages 15 and 16. North Carolina law requires payment of the minimum wage (currently $4.25 per hour) and overtime pay at the rate of time and one-half the regular rate for all hours worked in excess of 40 hours per workweek. These state law requirements apply to most nonfarm employers and employees not covered by the FLSA.

#10. Are there waivers under the FLSA or North Carolina laws?

Waivers

North Carolina law contains possible limited waivers from certain youth employment laws in hardship situations (see N.C. General Statute 95-25.5(f)). Contact the N.C. Wage and Hour Division to apply.

While Title V of the School-to-Work Opportunities Act does allow for the possibility of waivers for certain statutory and regulatory requirements, these do not apply to the Fair Labor Standards Act. In fact, the law specifically prohibits the secretaries from waiving any statutory or regulatory requirement under any provision relating to labor standards and occupational safety and health.

Thus, if your situation involves an employment relationship and the work is covered by FLSA, you must meet all statutory and regulatory requirements for the employment of minors.

#11. How important is terminology?

Terminology

Terminology is very important because misunderstandings can often occur. School-to-Work systems have already developed a vocabulary which may be different from the terminology used under the FLSA and the North Carolina Wage and Hour Act. Thus, caution should be exercised in using terminology.

Terminology (cont.)

For instance, it is common for teachers, who have had unpaid internships, to assume that other positions can be called internships, and, thus, are not covered. This is not the case. As it relates to school-to-work programs, only those meeting the learning experience elements and student criteria on pages 3 and 4 are not covered by FLSA or the N.C. Wage and Hour Act.

We encourage you to contact Wage and Hour staff (see page 23) if you have any questions about terminology. They can help clarify the definitions of apprentice, employment relationship, enterprise, hazardous occupations, internship, interstate commerce, minor, stipend, student-learner, trainee, work experience, and other terms used under the FLSA and the North Carolina Wage and Hour Act.

#12. What resources are available on the FLSA and the North Carolina Wage and Hour act?

Resources

A copy of the N.C. Wage and Hour Act is available from the N.C. Wage and Hour Division listed on page 23.

The following resources on FLSA are available from the U.S. Department of Labor Wage and Hour divisions listed on page 23:

Handy Reference Guide to the Fair Labor Standards Act, WH Publication 1282

Employment Relationship under the Fair Labor Standards Act, WH Publication 1297

Interpretive Bulletin, Part 785: Hours Worked under the Fair Labor Standards Act of 1938, As Amended

The Child Labor Requirements in Nonagriculture Occupations under the Fair Labor Standards Act, Child Labor Bulletin No. 101

The Child Labor Requirements in Agriculture under the Fair Labor Standards Act, Child Labor Bulletin No. 102

The following resource can be obtained by calling NIOSH (1-800-356-4674):

Request for Assistance in Preventing Deaths and Injuries of Adolescent Workers. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 95-125.

#13. Whom can we contact for assistance?

Assistance

The N.C. Wage and Hour Division, which is part of the N.C. Department of Labor, administers the N.C. Wage and Hour Act, which includes minimum wage, overtime, youth employment, and provisions relating to payment of promised wages and wage-like benefits such as vacation pay, sick leave, and holiday pay.

The U.S. Wage and Hour Division, which is part of the Employment Standards Administration of the U.S. Department of Labor, administers several labor laws including the Fair Labor Standards Act, the Family and Medical Leave Act, the Davis Bacon Act, the McNamara-O'Hara Service Contract Act, the Migrant and Seasonal Agricultural Worker Protection Act, and the Employee Polygraph Protection Act.

Both the N.C. and U.S. Wage and Hour Divisions are committed to assisting with the proper administration of STW programs. The Wage and Hour offices listed on page 23 can be contacted for informational and technical assistance at any level. They will assist any of the local partners involved in STW system implementation.

Specifically, both Wage and Hour staffs can help delineate the issues of a work-based learning experience and help make the correct determinations regarding FLSA and N.C. Wage and Hour Act application and compliance. They share an interest in promoting safe education experiences that enhance the success of youth in making the school-to-work transition and becoming effective and productive workforce participants.

As partners in this effort, both Wage and Hour staffs are committed to protecting the rights, safety, and well-being of youth workers and to serving you—the partners who are vital to the success of School-to-Work Opportunities.

#14. What about workers' compensation?

Workers' Compensation

Although beyond the scope of this publication, employers should recognize that any student-learner who is subject to wage and hour coverage will almost certainly be subject to workers' compensation coverage. There may further be instances in which a student-learner ***not*** subject to wage and hour coverage ***would*** be subject to workers' compensation coverage. Employers having questions should contact their workers' compensation carrier. The North Carolina Workers' Compensation Act is administered by the Industrial Commission, not the Department of Labor, and can be contacted at:

North Carolina Industrial Commission
Dobbs Building
430 North Salisbury Street
Raleigh, NC 27603-5937
Phone: (919) 733-6721

For additional information on the N.C. Wage and Hour Act, contact:

N.C. Department of Labor
Wage and Hour Division
413 North Salisbury Street
Raleigh, NC 27603-5942
Phone: (919) 733-2152 or 1-800-LABOR-NC
Fax: (919) 715-3858

For additional information on the Fair Labor Standards Act, contact:

U.S. Department of Labor
Employment Standards Administration, Wage and Hour Division
at the following locations:

Charlotte District
800 Briar Creek Road
Charlotte, NC 28205
Phone: (704) 344-6302
Fax: (704) 344-6307

Raleigh District
4407 Bland Road, Suite 260
Raleigh, NC 27611
Phone: (919) 790-2741
Fax: (919) 790-2843

For additional information on School-to-Work in North Carolina, contact:

School-to-Work Transition
Governor's Commission on Workforce Preparedness
116 West Jones Street, Administration Building
Raleigh, NC 27603
Phone: (919) 715-3300

For additional information on High School/Youth Apprenticeships, contact:

N.C. Department of Labor
Apprenticeship and Training Division
4 West Edenton Street
Raleigh, NC 27601-1092
Phone: (919) 733-7533 or 1-800-LABOR-NC

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